



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

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Docket No. 2775-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 7 June 2024. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Marine Corps and began a period of active duty service on 6 October 1982. Your enlistment physical examination, on 28 July 1982, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 17 August 1983, you received non-judicial punishment (NJP) for insubordinate conduct. You did not appeal your NJP.

On 5 July 1984, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) of two separate insubordinate conduct specifications, assault, and wrongfully communicating a threat. You were sentenced to confinement at hard labor for forty-five (45) days, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 24 July 1984, you waived clemency review by the Naval Clemency & Parole Board. On 9 November 1984, the General Court-Martial Convening Authority (CA) approved the SPCM sentence as adjudged.

On 28 February 1985, the U.S. Navy-Marine Corps Court of Military Review (NMCMR) affirmed the SPCM findings and sentence as approved by the CA. On 4 June 1985, the U.S. Court of Military Appeals (COMA) reversed the NMCMR decision as to the communicating a threat charge and set aside the guilty findings for only that charge and specification. However, COMA determined the set aside did not prejudice you as to the SPCM sentence for the remaining charges and specifications. Upon the completion of SPCM appellate review in your case, on 6 December 1985, you were discharged from the Marine Corps with a BCD and were assigned an RE-4 reentry code.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request, on 18 February 1987, after determining your discharge was proper as issued. On 26 August 2010, this Board denied your initial petition for discharge upgrade relief.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to your sole contention that you accepted a SPCM plea deal because you could not afford representation. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application, which consisted solely of the information you provided on your DD Form 149.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions. Additionally, the Board determined your sole contention to be without merit. The Board noted that, as a matter of right, you received free military counsel at your SPCM at no expense to you.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that, despite your contentions, this was not a case warranting any clemency as you were properly convicted at a SPCM of serious misconduct.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. Even in light of the Wilkie Memos and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

6/16/2024

